

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition for Declaratory Ruling Regarding Fees
Charged by Clark County, Nevada for Small
Wireless Facilities

WT Docket No. 19-230

REPLY COMMENTS OF THE CITY OF WALNUT CREEK, CALIFORNIA

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October 10, 2019

I. Introduction

The City of Walnut Creek, California (“City”) submits this reply comment in response to comments by Extenet Systems, Inc. (“Extenet”) supporting Verizon’s Petition for a Declaratory Ruling (WT Docket No. 19-230). Specifically, the City responds to Extenet’s assertion that Walnut Creek’s proposed small cell attachment rate fails to constitute a reasonable cost approximation.

In its comments dated September 25, 2019, Extenet alleges that the City, like several other municipalities named by the carrier, has been charging annual small cell pole attachment rates that exceeded the presumptively reasonable annual \$270 rate previously established by the Federal Communication Commission (“Commission”) . Extenet claims that the City unreasonably exceeded the \$270 threshold by charging \$2,000 per small cell per year. Extenet further asserts that the City, by charging above the \$270 rate, essentially failed to demonstrate that the rates charged are the reasonable approximates of reasonable costs.

II. City Reply Comments

The City disagrees with Extenet’s assertions. As set forth below, the City’s small cell pole license fee was proposed on the basis of the estimated costs the City is anticipated to incur with small cell deployments in the right of way and on City-owned poles. Thus, Extenet’s claims are incorrect because the City has a statutory basis to collect such fee, and the amount of fee is consistent both with federal telecommunications law and the Commission’s rationale in declaring that local government fees and charges should be a reasonable approximation of their costs.

Section 253(c) of the Telecommunications Act preserves local government authority to manage their public rights of way and to require “fair and reasonable compensation” from telecommunications providers for use of public rights-of-way, on a non-discriminatory, fair, and transparent basis.¹ In its Third Report and Order dated

¹ 47 U.S.C. §253(c).

September 26, 2018 (“TRO”)², the Commission’s interpretation of this statute recognized that local governments incur “a variety of direct and actual costs in connection with small cell wireless facilities”, which would vary by “location, scope, and extent of providers’ planned developments.”³ The TRO thus stated that local governments may charge fees that recover a reasonable approximation of their costs including but not limited to, staff time, costs associated with a provider’s use of the right of way, and cost of maintaining the right of way or structures located therein.⁴ To accommodate these local differences, the Commission further specified that no specific accounting method would be required for local governments to calculate costs incurred.⁵

Extenet’s comments ignores the fact that the City’s proposed \$2,000 small cell pole license fee is based on an estimated breakdown of annual pole expenses. Upon carriers deploying small cell facilities on City poles, the City anticipates to incur annual costs including but not limited to periodic inspections, GIS map updates and management, maintenance, utilization of the City’s power supply, and additional staff time to process the carriers’ applications and associated license agreements. These costs are calculated on the rate of hourly staff time to arrive at the \$2,000 figure. The City previously provided this breakdown analysis to Extenet during ongoing negotiations for master license agreement with the carrier.

Therefore, the City disputes Extenet’s assertions made in its prior comments. The City is statutorily authorized to require compensation from wireless carriers in managing the right of way, and has also developed breakdowns of anticipated costs associated with carriers’ deployment of small cells on poles in the right of way. Extenet fails to consider that the City has proposed the \$2,000 fee rate based on anticipated costs associated with small cell deployment. Thus, the City’s proposed small cell license fee rate constitutes a reasonable approximation of its anticipated, reasonable cost. Its decision to propose such a rate is therefore consistent with federal law and with the Commission’s rationale and

² *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT 17-79, WC 17-84, FCC 18-133, September 26, 2018 (“TRO”).

³ TRO paragraphs 72, 75.


⁴ TRO paragraph 75.

⁵ TRO paragraph 76.

standards set forth in the TRO. Contrary to Extenet's claims, the City has demonstrated that the rates charged are the reasonable approximates of reasonable costs.

Dated: October 10, 2019

Respectfully Submitted,

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